In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 647

SALLIE M. HADNOTT, ET AL., ETC., APPELLANTS

v.

MABEL S. AMOS, ETC., ET AL.

MEMORANDUM FOR THE UNITED STATES

In light of the "Motion for Order to Show Cause" recently filed by appellants in this Court, we deem it appropriate to advise the Court of the action taken by the district court in this case on motion of the United States.

On November 20, 1968, the United States filed a series of motions in this case in the United States District Court for the Middle District of Alabama (constituted as a court of three judges) seeking relief in several respects similar to that sought by appellants' motion. On November 21, 1968, the district court entered orders:

> (1) designating the United States as an *amicus curiae* and a party in the case for the purpose of vindicating the district court's order of September 18, 1968, reinstated by this Court on October 14 and October 19, 1968, and, generally,

326-466—68——1

to preserve the integrity of the judicial process (Appendix, *infra,* pp. 5–7);

(2) adding as parties defendant in the district court the officials of Greene County, Alabama, responsible for conducting the November 5, 1968, general election, J. Dennis Herndon, Judge of Probate, William E. Lee, Sheriff, and Mary C. Yarbrough, Circuit Clerk, and the residents of Greene County who were purportedly elected on November 5, 1968, as either a Commissioner of Greene County or a member of the Greene County Board of Education, G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould, and Richard Owens (Appendix, *infra,* pp. 9–10);

(3) directing the Judge of Probate, the Sheriff and the Circuit Clerk of Greene County, Alabama, and the Secretary of State of the State of Alabama, to show cause on December 20, 1968, why they should not be restrained, pending a final determination of this action, from giving effect to the results of the November 5, 1968, election in Greene County for the offices of County Commissioner and Board of Education; and directing G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens, residents of Greene County, Alabama, who received the highest number of votes cast for the offices of County Commissioner and member of the Greene County Board of Education respectively in the November 5, 1968, election, to show cause on the same date why they should not be restrained, pending a final determination of this action, from assuming or taking office in Greene County (Appendix, *infra,* pp. 11–12; see also pp. 13–20).

We attach to this memorandum copies of the orders referred to, together with the motion for an order to show cause filed by the United States (Appendix, *infra*, pp. 13–20), reference to which is necessary to determine the scope of the order issued thereon.

A further comment may be appropriate. Because the outstanding judgment of the court below denies the basic claim of the appellants that they were entitled to appear on the ballot, and this Court has not yet considered the case on its merits, nor even noted probable jurisdiction of the appeal, the United States has hesitated to pray for an order directing a new election in Greene County. Yet, as a practical matter, nothing short of that will afford effective relief: an order temporarily enjoining the implementation of the election held November 5 will have no present effect as against five of the six candidates whose election is challenged because they are incumbents and will therefore continue in office as hold-overs even after their present terms expire.

This, of course, was not the result anticipated by the Court when it re-instated the district court's temporary restraining order and denied the motion to advance the case. Had that order been followed in Greene County and appellants been elected (as seems likely), those of them who were chosen to serve on the County Board of Education presumably would have assumed office this November, as soon as the results of the election were certified (see Ala. Code 1958, Tit. 52, Sec. 65), and those chosen as Commissioners would assume office on January 20, 1969 (Ala. Code 1958,

Tit. 41, Sec. 18), if no final decision was rendered by that time. In the circumstances, the Court may wish to reconsider its order of October 19, 1968, denying appellants' motion to advance the case on its docket.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1968.

APPENDIX

In the United States District Court for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT; REVEREND WILLIAM MCKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR.; AND THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, A CORPORATION FOR THEMSELVES JOINTLY AND SEVERALLY, AND FOR ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS, UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

v.

MABEL S. AMOS, AS SECRETARY OF STATE OF THE STATE OF ALABAMA; EDWARD A. GROUBY, AS JUDGE OF PROBATE FOR AUTAUGA COUNTY, ALABAMA; AND ALL OTHER JUDGES OF PROBATE OF THE STATE OF ALABAMA, JOINTLY AND SEVERALLY, WHO ARE SIMILARLY SITUATED; ALBERT BREWER, AS GOVERNOR OF THE STATE OF ALABAMA; MACDONALD GALLION, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND THEIR SUCCESSORS IN EACH OFFICE, DEFENDANTS

ORDER APPOINTING AND DESIGNATING THE UNITED STATES AS AMICUS CURIAE AND AS PARTY

Upon consideration of the papers filed by the United States in the above-styled case and the relief sought by the United States, this Court is of the

opinion that the maintenance and preservation of the due administration of justice and the integrity of the judicial process requires that the public interests be represented in these proceedings. To this end, this Court is of the opinion that it is now appropriate and necessary that the United States should be designated to appear and participate in this action before this Court and to accord this Court the benefit of its views and recommendations, with the right to submit pleadings, evidence, arguments and briefs, the right to move for injunctive and other necessary and proper relief, and the right to initiate such further proceedings that may be necessary and appropriate. *Faubus* v. *United States,* 254 F. 2d 797 (8th Cir. 1958), *cert. denied,* 358 U.S. 829; *Bush* v. *Orleans Parish School Board,* 188 F. Supp. 916 (E.D. La. 1960), *aff'd.* 365 U.S. 569; *Bush* v. *Orleans Parish School Board,* 190 F. Supp. 861 (E.D. La. 1960), *aff'd* 366 U.S. 212; *Bush* v. *Orleans Parish School Board,* 191 F. Supp. 871 (E.D. La. 1961), *aff'd* 367 U.S. 908, *rehearing denied* 368 U.S. 870; *United States* v. *Barnett,* 330 F. 2d 369 (5th Cir. 1962), *decision on certified question,* 376 U.S. 681; *Lee* v. *Macon County Board of Education,* 231 F. Supp. 743 (M.D. Ala. 1964); *Miles* v. *Dickson,* Civil Action No. 2326–N (M.D. Ala., June 15, 1966); *Alabama NAACP State Conference of Branches* v. *George C. Wallace,* Civil Action No. 2457–N (M.D. Ala.).

In accordance with the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the United States of America be and it is hereby designated to appear and participate in this action before this Court as amicus curiae and as a party, with the right as such to submit pleadings, evidence, arguments and briefs, to move for injunctive and other necessary and proper relief, and to initiate

such further proceedings that may be necessary and appropriate.

It is the further ORDER of this Court that the Attorney General of the United States, and such attorneys in the United States Department of Justice as he may designate, be and he is hereby appointed to appear and participate in behalf of the United States in this action.

Done this 21st day of November, 1968.

(S) JOHN C. GODBOLD, FMJ,
Circuit Judge.

(S) FRANK M. JOHNSON, Jr.,
District Judge.

(S) VIRGIL PITTMAN, FMJ,
District Judge.

In the United States District Court for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT, ET AL., PLAINTIFFS
UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

v.

MABEL S. AMOS, ET AL., DEFENDANTS

ORDER APPROVING THE MOTION OF THE UNITED STATES AS AMICUS CURIAE AND AS A PARTY TO ADD PARTIES DEFENDANT

Upon consideration of the motion of the United States to add parties defendant in the above-styled case pursuant to Rule 21, Federal Rules of Civil Procedure, the Court is of the opinion that the maintenance and preservation of the due administration of justice and the integrity of the judicial process of the United States make it necessary that the requested parties defendant be added.

It is, therefore, the ORDER, JUDGMENT, and DECREE of this Court that the following be added as parties defendant to the above-styled case: J. Dennis Herndon, as Judge of Probate of Greene County, Alabama; William E. Lee, as Sheriff of Greene County, Alabama; Mary C. Yarbrough, as Circuit Clerk of Greene County, Alabama; G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens, residents of Greene

326-466—68——2

County, Alabama and Democratic Party candidates for local office in Greene County in the November 5, 1968 General Election.

Done this 21st day of November, 1968.

(s) JOHN C. GODBOLD, FMJ,
Circuit Judge.

(s) FRANK M. JOHNSON, Jr.,
District Judge.

(s) VIRGIL PITTMAN, FMJ,
District Judge.

In the United States District Court for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT, ET AL., PLAINTIFFS, UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

v.

MABEL S. AMOS, ET AL., DEFENDANTS.

ORDER

The Court, having considered the Motion for Order to Show Cause submitted by the United States in this action, it is ORDERED, ADJUDGED, and DECREED that the defendants J. Dennis Herndon, Judge of Probate for Greene County, Alabama; William E. Lee, Sheriff of Greene County, Alabama; Mary C. Yarbrough, Circuit Clerk of Greene County, Alabama; G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens, residents of Greene County, Alabama and Democratic Party candidates for local office in Greene County in the November 5, 1968 General Election, appear before this Court in the Courtroom of the United States District Court, Montgomery, Alabama, on December 20, 1968 at 9:30 o'clock a.m. and there and then show cause, if any they or any of them have, why they and each of them should not be enjoined in accordance with the attached Motion of the United States for an Order to Show Cause.

It is FURTHER ORDERED that the defendant William E. Lee, Sheriff of Greene County, shall not, pending the show cause hearing, destroy or cause to

be destroyed, any ballots cast by any voters at any box, including absentee ballots, in the Greene County General Election, November 5, 1968, or any tally sheets, certificates of results or other election stationery used in said election.

It is FURTHER ORDERED that the defendants J. Dennis Herndon, William E. Lee, Mary C. Yarbrough, G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould, and Richard Owens shall not, pending the show cause hearing, destroy or cause to be destroyed any letters, communications, or records of communications pertaining to the General Election of November 5, 1968, or to this case.

The United States Marshal shall forthwith serve a copy of this Order and the attached Motion of the United States for an Order to Show Cause upon defendants Mabel S. Amos, J. Dennis Herndon, William E. Lee, Mary C. Yarbrough, G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens.

DONE and ORDERED this 21st day of November, 1968.

(S) JOHN C. GODBOLD, FMJ,
Circuit Judge.

(S) FRANK M. JOHNSON, JR.,
Circuit Judge.

(S) VIRGIL PITTMAN, FMJ,
Circuit Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1968

In the United States District Court for the Middle District of Alabama

Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT; REVEREND WILLIAM MCKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR., AND THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, A CORPORATION FOR THEMSELVES JOINTLY AND SEVERALLY, AND FOR ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS, UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

v.

MABEL S. AMOS, AS SECRETARY OF STATE OF THE STATE OF ALABAMA; EDWARD A. GROUBY, AS JUDGE OF PROBATE FOR AUTAUGA COUNTY, ALABAMA; AND ALL OTHER JUDGES OF PROBATE OF THE STATE OF ALABAMA JOINTLY AND SEVERALLY, WHO ARE SIMILARLY SITUATED; ALBERT BREWER, AS GOVERNOR OF THE STATE OF ALABAMA, MACDONALD GALLION, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND THEIR SUCCESSORS IN EACH OFFICE; J. DENNIS HERNDON, AS JUDGE OF PROBATE FOR GREENE COUNTY, ALABAMA; WILLIAM E. LEE, AS SHERIFF OF GREENE COUNTY, ALABAMA; MARY C. YARBROUGH, AS CIRCUIT CLERK OF GREENE COUNTY, ALABAMA; G. D. SEALE; J. E. HENDERSON; HOMER E. CARPENTER; W. HERMAN DRUMMOND; HUGH GOULD; AND RICHARD OWENS, DEFENDANTS

MOTION FOR ORDER TO SHOW CAUSE

1. This action was commenced September 13, 1968, as a class action to require the defendants, state and

local officials of the State of Alabama, to place upon the official ballots for the November 5, 1968 general election, the names of the National Democratic Party of Alabama candidates for federal, state and local offices.

2. The plaintiffs herein are the National Democratic Party of Alabama and officers and candidates of the National Democratic Party of Alabama (hereafter referred to as the NDPA).

3. The original defendants in this case are the Secretary of State, the Governor and the Attorney General of the State of Alabama and the Probate Judge of Autauga County, Alabama, as representative of the Judges of Probate of the State of Alabama.

4. The United States as amicus curiae has filed a motion requesting this court to add as parties defendant J. Dennis Herndon, the Probate Judge of Greene County, Alabama; William E. Lee, Sheriff of Greene County, Alabama; Mary C. Yarbrough, Circuit Clerk of Greene County, Alabama; G. D. Seale, J. E. Henderson, Homer E. Carpenter and W. Herman Drummond, Democratic Party candidates for County Commissioner; and Hugh Gould and Richard Owens, Democratic Party candidates for Greene County Board of Education. The only candidates for County Commissioner and Board of Education whose names appeared on the Greene County General Election ballots were these Democratic Party candidates.

5. Alabama law imposes on defendants, Herndon, Lee and Yarbrough, by virtue of their respective offices, the duty to conduct general elections in Greene County. Such duties include the duty of defendant Herndon as Probate Judge, to cause the names of all candidates to be printed on the official ballots.

6. On September 18, 1968, upon order of this court each Judge of Probate of the State of Alabama was

ordered to prepare or print ballots which included the nominees of the NDPA, and the use, display, or circulation of official ballots not including the names of the nominees of the NDPA was barred. A copy of that order is attached hereto.

7. Among the nominees of the NDPA designated in the court's order of September 18, 1968 for inclusion on the Greene County ballots were the names of candidates for four places on the County Commission and for two places on the County Board of Education. Those candidates were:

Vassie Knott for County Commissioner, District No. 1;
Harry C. Means for County Commissioner, District No. 2;
Levi Morrow, Sr. for County Commissioner, District No. 3;
Frenchie Burton for County Commissioner, District No. 4;
Robert Hines for Greene County Board of Education, Place No. 1;
J. A. Posey, Sr. for Greene County Board of Education, Place No. 2.

8. In compliance with the order of September 18, 1968, absentee ballots were printed for Greene County, Alabama, with the names of the federal, state, and local candidates of the NDPA. These absentee ballots, printed prusuant to instructions given by defendant Herndon, were delivered to him on September 24, 1968. A copy of the absentee ballot is attached as Exhibit A.

9. After a hearing on the merits this court on October 11, 1968, entered its opinion and order which dissolved the temporary restraining order of September 18, 1968, and enjoined the defendants from omitting from the official ballot the names of the nominees of the NDPA only insofar as such omission was based

upon a letter and affidavits purporting to contain evidence of the failure of the NDPA to hold a mass meeting in Huntsville, Alabama, on May 7, 1968.

10. The plaintiffs noticed an appeal to the Supreme Court of the United States accompanied by an application for restoration of temporary relief. On October 14, 1968, the Supreme Court of the United States restored the district court's restraining order pending oral argument on the application. JOURNAL OF THE SUPREME COURT OF THE UNITED STATES (Monday, October 14, 1968), Orders in Pending Cases, p. 14, No. 647, *Sallie M. Hadnott, et al., appellants* v. *Mabel S. Amos, etc., et al.* On October 19, 1968, the Supreme Court of the United States continued the order of October 14, 1968, restoring tempofary relief pending action upon the jurisdictional statement. JOURNAL OF THE SUPREME COURT OF THE UNITED STATES (Saturday, October 19, 1968) Order in Pending Case, p. 68, No. 647. *Sallie M. Hadnott, et al., appellants* v. *Mabel S. Amos, etc., et al.*

11. On October 14, 1968, defendant Herndon ordered the printing of the regular ballots and specified that on the Greene County portion of the ballot the names of the nominees of the NDPA were to be deleted. The ballots, so printed, were delivered to defendant Herndon on October 17, 1968. A copy of the regular ballot is attached as Exhibit B. Herndon and/or attorneys representing him had knowledge of the October 14 and October 19 orders of the Supreme Court of the United States.

12. During the period between October 14 and the election, defendant Herndon did not advise the NDPA officers or the NDPA candidates for local office that the names of such candidates would not appear on the official ballot to be used at the polls. During the

same period when interested persons requested sample ballots defendant Herndon gave them copies of the absentee ballot without advising such persons that the regular ballot did not contain the names of the NDPA candidates for local office. During this same period, the NDPA candidates for local office continued to campaign, fully expecting that their names would be on the official ballot.

13. On November 5, 1968, the general election was held in Greene County, Alabama, under the supervision and direction of defendants Herndon, Lee and Yarbrough, who delivered to election officials the ballots described in paragraph 11, above.

14. During the course of the general election held in Greene County, Alabama, on November 5, 1968, approximately 3976 persons voted at the polls and approximately 171 persons voted absentee. In each race in which the names of the NDPA candidates appeared on the ballot used at the polls, the NDPA candidates received a majority of the votes cast. Of the approximately 4147 persons who voted in Greene County, 2036 voters cast a straight NDPA ticket by placing an "X" under the party emblem. The defendant Democratic Party nominees for County Commissioner and Board of Education received approximately the following number of votes.

Name	Office	Votes
G. D. Seale	County Commissioner, District No. 1	1709
J. E. Henderson	County Commissioner, District No. 2	1702
Homer E. Carpenter	County Commissioner, District No. 3	1709
W. Herman Drummond	County Commissioner, District No. 4	1704
Hugh Gould	Greene County Board of Education, Place No. 1	1708
Richard Owens	Greene County Board of Education, Place No. 2	1699

15. The distribution and use in the Greene County general election of the ballots without the names of the NDPA nominees for local office was in violation

of this court's order of September 18, 1968, as restored by the orders of October 14 and October 19, 1968, of the Supreme Court of the United States.

Wherefore, in order to protect and preserve the judicial process, to uphold the authority of the courts of the United States, and to maintain the integrity of the electoral process, the United States as amicus curiae moves the court to order the defendants Herndon, Lee, Yarbrough, Seale, Henderson, Carpenter, Drummond, Gould and Owens to show cause why they and each of them should not be restrained, pending a final determination of this action, from giving effect to the results of the Greene County General Election of November 5, 1968, for the offices of county commissioner and board of education, by the issuance of an injunction, as follows:

1. J. Dennis Herndon, Judge of Probate, Greene County, Alabama, and Mary C. Yarbrough, Circuit Clerk, Greene County, Alabama, be restrained from certifying the results of the November 5, 1968, Greene County, Alabama, General Election for the following offices:

County Commissioner, District No. 1
County Commissioner, District No. 2
County Commissioner, District No. 3
County Commissioner, District No. 4
County Board of Education, Place No. 1
County Board of Education, Place No. 2

2. Mabel S. Amos, Secretary of State of the State of Alabama, be restrained from issuing a commission as Commissioner, Greene County, Alabama, to any of the following:

G. D. Seale
J. E. Henderson
Homer E. Carpenter
W. Herman Drummond

3. G. D. Seale, J. E. Henderson, Homer E. Carpenter, and W. Herman Drummond be restrained from taking the oath of office as commissioners, Greene County, Alabama, and are also restrained from assuming or taking office as Commissioners of Greene County, Alabama.

4. Hugh Gould and Richard Owens be restrained from taking the oath of office as members of the Board of Education of Greene County and from assuming or taking office as members of the Board of Education of Greene County, Alabama.

5. William E. Lee, Sheriff of Greene County, Alabama, be restrained from destroying or causing to be destroyed any ballots cast by any voter at any box, including absentee ballots, in the Greene County General Election, November 5, 1968, or any tally sheets, certificates of results, or other election stationery used in said election.

6. Any certification of the results of the Greene County, Alabama General Election of November 5, 1968, for county commissioner and board of education, qualification of the Democratic Party candidates for said offices, or commissioning of said candidates be declared null and void for the duration of this restraining order.

7. Defendants Herndon, Lee, Yarbrough, Seale, Henderson, Carpenter, Drummond, Gould and Owens be restrained from destroying or causing to be destroyed any letters, communications, or records of communication pertaining or relating to the General Election of November 5, 1968, or to this case.

This motion is based upon the pleadings and evidence already in the record in this case, the attached exhibits, and evidence to be adduced at the hearing.

(s) RAMSEY CLARK,
Attorney General.
(s) STEPHEN J. POLLAK,
Assistant Attorney General.
(s) BEN HARDEMAN,
United States Attorney.
(s) FRANK M. DUNBAUGH,
(s) JOHN T. NIXON,
Attorneys,
U.S. Department of Justice.